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CHARLES ELMORE

No. 672

In the Supreme Court of the United States

OCTOBER TERM, 1931

PLANTERS COTTON OIL COMPANY, INC., OF WAXAHACHIE, TEXAS, ET AL., PETITIONERS

v.

GEORGE C. HOPKINS, COLLECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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The question presented is whether statutory net losses sustained by two joint stock associations during their taxable year ending in 1924, when they were not affiliated with any other corporations, may be used as a deduction in computing consolidated net income for the next succeeding taxable year, during which the two associations were affiliated

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with three other corporations[1] and again had no net income but suffered losses. The question is substantially the same as that presented in *Woolford Realty Company, Inc.* v. *Rose,* No. 582, October Term, 1931, in which this Court recently granted a writ of certiorari. The statute under which the right to take the net loss deduction is claimed is the same as that involved in the *Woolford* case, Section 206 (b), Revenue Act of 1926, c. 27, 44 Stat. 9, 17.

The Government did not oppose the petition for certiorari in that case since it was believed that the decision, in principle, was in conflict with *National Slag Co.* v. *Commissioner,* 47 F. (2d) 846 (C. C. A. 3d), which involved an identical provision in an earlier Act, Section 206 (b) of the Revenue Act of 1924, c. 234, 43 Stat. 253, 260. In the *Woolford Realty* case, the question was whether net losses sustained by a corporation in 1925 and 1926, before it became a member of an affiliated group in 1927, might be deducted in computing the net income of the group for 1927 despite the fact that the member which had suffered the net losses had no net income for 1927. In the *National Slag* case one Buckland had during 1922 and 1923 owned practically all the interest in two businesses, one incorporated and the other not. The latter was incorporated in 1924, Buckland owning practically

[1] The two joint stock associations are considered to be corporations for the purposes of the Revenue Act. Sec. 2 (a) (2), Revenue Act of 1926, c. 27, 44 Stat. 9.

all its stock. For the year 1924 a consolidated return for the two corporations was filed. The Circuit Court of Appeals held that the net losses sustained by the old corporation in 1922 and 1923, before the affiliation, might be deducted in computing the consolidated net income for 1924, despite the fact that the old corporation had no net income for that year. Since in the present case the same individual owned practically all the interest in the two joint stock associations before affiliation and practically all the interest in all five organizations, after the creation of the three new corporations, the decision below seems squarely in conflict with the *National Slag* case.

We suggest that action upon the instant petition be deferred until the decision of this Court in the *Woolford* case. If our contentions prevail in that case, it would seem that this petition should be denied.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
G. A. YOUNGQUIST,
Assistant Attorney General.
CLAUDE R. BRANCH,
J. LOUIS MONARCH,
NORMAN D. KELLER,
Special Assistants to the Attorney General.
WILBUR H. FRIEDMAN,
Attorney.

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